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an elongate part having at least one passage for insertion of an instrument selected from the group consisting of an endoscope, scissors and the like, and

pivotal parts formed at a distal section of the elongate part, each having a blade end portion, the pivotal parts converging toward one another in a piercing position, wherein the blade end portions of the pivotal parts form a pointed tip which permits the cutting of the body wall without an additional trocar mandrel and wherein the distal section has a flange bearing against an outer side of the body wall.

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Remarks

Applicant acknowledges Examiner's suggestion that claims 30 and 31 are allowable if rewritten in independent form. Applicant has amended claim 30 to include the subject matter of claim 24 to include the subject matter of claim 24 in order to adopt the Examiner's indication of allowability. The subject matter of claim 31 is dependent on claim 30 and by the foregoing amendment also indicated to be allowable.

Applicant has submitted a corrected Fig. 2 with changes submitted in red, together with a clean version of corrected Fig. 2.

All claims of the present invention stand rejected as anticipated by U.S. Patent 5,320,627 to Sorenson et al. and unpatentable over the same reference.

The claims are directed to a trocar sleeve for endoscopic applications which includes an elongate part having at least one passage for insertion of an instrument, such as an endoscope, a scissors and the like. Pivotal parts are formed at a distal section of the elongate part, each pivotal part having a blade end portion which permits the cutting of the body wall without requiring an additional trocar mandrel. To this end, Claim 24 specifically requires that the pivotal parts converging toward one another in a piercing position, wherein the blade end portions of the pivotal parts form a pointed tip. This limitation, at least, is not disclosed, taught or suggested by Sorenson et al.

Sorenson et al. teach away from the present invention. The present invention includes a cutting edge for cutting the tissue of a patient and inserting same trocar. However, Sorenson *et al.* miss this feature and further indicate that the Sorenson device is to be inserted through an existing orifice or small incision. Column 1, lines 12-14, also column 4, lines 32-35. The same limitation of requiring a pre-existing incision is taught by Sorenson *et al.* in the operation of the first embodiment. Column 11, lines 36-40.

For example, in the rejection Examiner cites that sleeve 10, elongated part 14, instrument passage 24a, 26a and pivotable parts 16a-d appear capable of "cutting" tissue. Sorenson *et al.*, however teach that the device 10 may be used after a laparoscopic incision has exteriorized the subject human organ. Column 11, lines 30-35. Further, Sorenson *et al.* teach that tip members 16a-d form a protective covering over the cutting head or impactor 26a-c used to pulverize gallstones etc., Column 11, lines 64-67.

According to column 9, lines 34 to 48 of the reference, the tip members of the device are configured so that when deployed in an open or splayed configuration, they will form an abutment means which can abut against the neck of the organ or sac and/or the body wall so as to prevent the device from being accidentally withdrawn. Thus the tip members can be used to abut against the inner walls of an organ such as a gall bladder having a relatively small radius of curvature. It would be inexpedient for the tip members to be adapted for cutting, i.e. provided with sharp tip edges, because of a considerable danger of injury to the organ walls upon an unavoidable movement of the tip members.

The pivotable parts of the present invention are attached to a trocar sleeve which is used for insertion of an instrument from the outside into a patient's body, and are also adapted to bear against an inner side of a body wall. However, a body wall, such as an abdominal wall, has a relatively large radius of curvature as shown in Figure 1, and the danger of an injury being caused upon a displacement of the pivotable parts is much smaller than it would be in the case of the tip members of the reference, if they were to have sharp tip edges and were to be inserted into a small body organ. Thus, it should not be assumed that the tip members of the reference are capable of cutting through tissue.

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Applicant believes that no additional fees are due. However, this is also a petition and a request to charge to Account No. 19-4516 for any additional extension and/or fee as may be required or credit for any excess fee paid.

In light of the above, applicant believes all claims are in condition for allowance and early resolution to that effect is earnestly solicited.

Respectfully submitted,



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